

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ayirini Fonseca-Sabune	Team: Team # 4	CCRB Case #: 200509886	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 08/20/2005 1:00 PM, Sunday, 08/21/2005	Location of Incident: in front of § 87(2)(b)	Precinct: 103	18 Mo. SOL 2/20/2007	EO SOL 2/20/2007	
Date/Time CV Reported Wed, 08/24/2005 4:39 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 08/24/2005 4:39 PM		
Complainant/Victim	Type	Home Address			
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)			
Witness(es)	Home Address				
§ 87(2)(b)	§ 87(2)(b)				
Subject Officer(s)	Shield	TaxID	Command		
1. SGT Joseph Hayward	92393	923936	PSA 9		
Witness Officer(s)	Shield No	Tax No	Cmd Name		
1. POM Michael Feduniak	11468	917610	PSA 9		
2. POM Andre Menzies	11305	927795	PSA 9		
Officer(s)	Allegation			Investigator Recommendation	
A.SGT Joseph Hayward	Discourtesy: Sgt. Joseph Hayward spoke obscenely and rudely to § 87(2)(b) § 87(2)(b)			§ 87(2)(b)	
B.SGT Joseph Hayward	Abuse: Sgt. Joseph Hayward threatened to have § 87(2)(b) § 87(2)(b) detained in a psychiatric ward.			§ 87(2)(b)	

Synopsis

On August 20, 2006, at approximately 2:00 PM, Sgt. Joseph Hayward responded to § 87(2)(b) in Queens because § 87(2)(b) had called 911 from that location. § 87(2)(b) was in front of the building when Sgt. Hayward arrived. § 87(2)(b) approached Sgt. Hayward's vehicle and spoke to him about a situation which he had called 911 about earlier that day, involving § 87(2)(b) whom he believed was stealing money from residents of the building. After Sgt. Hayward and § 87(2)(b) had been talking for a few minutes, § 87(2)(b) came out of the building and PO Michael Feduniak and PO Andre Menzies arrived in a patrol car. § 87(2)(b) spoke with PO Feduniak and PO Menzies. PO Feduniak took a complaint from § 87(2)(b) regarding § 87(2)(b)'s harassment. Sgt. Hayward allegedly asked § 87(2)(b) if he was "mental," what kind of "mental condition" he had, and whether "he had ever been locked up in a mental institution" (allegation A). Sgt. Hayward also allegedly said to § 87(2)(b) "You either walk away, or I'm gonna lock you up in a mental ward" (allegation B). § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB on December 7, 2005 (enc. 4A-4C). On August 20, 2005, at approximately 1:00 PM, § 87(2)(b) approached Sgt. Joseph Hayward, outside his building, § 87(2)(b) in Queens. Earlier that day, § 87(2)(b) had called the police at around 11:00 AM because he was being harassed by § 87(2)(b), § 87(2)(b). Two officers, identified through this investigation as PO Michael Feduniak and PO Andre Menzies responded to § 87(2)(b)'s call and came to his apartment. § 87(2)(b) did not think the officers responded appropriately to his concerns.

§ 87(2)(b) saw Sgt. Hayward sitting in a marked vehicle outside of his building. He approached Sgt. Hayward's vehicle and explained his concerns regarding § 87(2)(b)'s harassment. After 3 or 4 minutes, § 87(2)(b) came out of the building § 87(2)(b). PO Feduniak and PO Menzies also drove up in a police car. PO Feduniak and PO Menzies got out of their vehicle and § 87(2)(b) spoke with them. Sgt. Hayward then got out of his vehicle and spoke with § 87(2)(b) before he went over to talk to the other officers and § 87(2)(b). Sgt. Hayward, § 87(2)(b) and the two other officers then talked together next to the other officers' police vehicle. § 87(2)(b) stated that when Sgt. Hayward came back from talking to § 87(2)(b) he was "combative" and "aggressive." § 87(2)(b) stated that he "saw Jim Crow" that day, referring to his belief that Sgt. Hayward was racist and trying to "incite § 87(2)(b) to riot." Sgt. Hayward stood about a foot away from § 87(2)(b) which § 87(2)(b) felt was too close, and asked him, "Have you ever been locked up in a mental institution?" and "Are you mental?" Sgt. Hayward continued to ask him questions about his mental state, and asked "What kind of mental condition do you have?" Sgt. Hayward then stated, "You either walk away, or I'm gonna lock you up in a mental ward." At this point, § 87(2)(b) walked away. During his CCRB interview, § 87(2)(b) refused to answer questions regarding his psychiatric history or condition and stated that he was not allowed to be asked those types of questions.

Results of Investigation

Witness Statement

§ 87(2)(b)

§ 87(2)(b) was interviewed on March 10, 2006 over the phone (enc. 5A-5B). § 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that § 87(2)(b) has been harrasing her for two years. § 87(2)(b) and § 87(2)(b) live in the same apartment building. It is a senior citizen's building and § 87(2)(b) lives in the apartment that used to belong to his mother although he is not a senior citizen. On August 20, 2005, § 87(2)(b) called the police because § 87(2)(b) had been following her. She had first gone to the 103rd Precinct stationhouse to report this, but had not been helped. She called the housing police when she returned to her apartment.

When § 87(2)(b) came out to the front of her building to meet the police, she saw § 87(2)(b) was already talking to one officer who was seated in a car, identified through this investigation as Sgt. Hayward. She saw two other officers there, identified through this investigation as PO Feduniak and PO Menzies. § 87(2)(b) approached Sgt. Hayward and § 87(2)(b). She stated "I am a § 87(2)(b)-year-old woman and this man harasses me everyday." PO Feduniak and PO Menzies walked § 87(2)(b) to the side because she and § 87(2)(b) tried to talk at the same time. She was talking with PO Feduniak and PO Menzies about her situation. Sgt. Hayward asked § 87(2)(b) "Why do you bother her? What did she do to you?" § 87(2)(b) stated that § 87(2)(b) was a thief. § 87(2)(b) was using profanity when talking with Sgt. Hayward, including the word "fuck." Sgt. Hayward said to § 87(2)(b) "If you say that again, you're going to jail." § 87(2)(b) stopped cursing at that point. PO Feduniak or PO Menzies asked § 87(2)(b) whether § 87(2)(b) always acts like this, and she stated, "When he gets under the influence of something, he acts crazy."

After she spoke to the officers, the officers came together and spoke to each other. One officer said to her, "Don't you say anything to him." § 87(2)(b) replied that she does not say anything to § 87(2)(b). Another officer, though § 87(2)(b) does not remember which one, stated that § 87(2)(b) "appears to be under the influence of something." § 87(2)(b) heard them saying this, but was not sure whether § 87(2)(b) heard them also. Sgt. Hayward went back to § 87(2)(b) and said, "You have three options: walk away, go to the hospital or go to jail." At this point, § 87(2)(b) crossed the street and walked away.

§ 87(2)(b) stated that none of the officers asked § 87(2)(b) whether he had been "locked up in a mental institution." She stated that none of the officers stated, "Are you mental?" "What kind of mental condition do you have?" or "How long have you been locked up in a mental institution?" She stated that the officers did not say, "You either walk away or I'm gonna lock you up in a mental ward." She stated that the officers did not use any profanity. § 87(2)(b) stated that § 87(2)(b) seemed like he was under the influence of something, though she did not know what, but he did not seem drunk.

Officer Identification

§ 87(2)(b) identified Sgt. Joseph Hayward by name and Sgt. Hayward confirmed that he responded to this location and interacted with § 87(2)(b). § 87(2)(b) made all of the allegations against Sgt. Hayward. § 87(2)(b) stated that there were two other officers at the scene. Sgt. Hayward identified PO Michael Feduniak as one of the officers who responded. PO Feduniak confirmed his presence and stated that PO Andre Menzies was his partner. PO Menzies confirmed his presence at the incident.

Officer Statements

Sgt. Joseph Hayward

Sergeant Joseph Hayward was interviewed at the CCRB on January 17, 2006 (enc. 6A-6C). When Sgt. Hayward was interviewed, he stated that the date of incident that the complainant provided, August 21, 2005, was not the date that the incident occurred because on this date Sgt. Hayward was assigned to work in the 114th Precinct and would not have responded to this location. However, he stated that he did recall the incident.

On the date of the incident, identified through the course of this investigation as August 20, 2005, Sgt. Hayward heard a job call on the air in the vicinity of § 87(2)(b) in Queens. At around 3:00 PM, he responded to the address in order to scratch the sector car. He arrived at the address before the sector car did. When he arrived, he was waved down by a black male individual, identified through the course of this investigation as § 87(2)(b). Sgt. Hayward pulled his vehicle over, and § 87(2)(b) approached him. Sgt. Hayward rolled down his window. § 87(2)(b) stated that he was § 87(2)(b) and that he was going to “kick [Sgt. Hayward’s] ass.” § 87(2)(b) continued to say similar things, but he was rambling incoherently, and Sgt. Hayward was not able to recall what else he said. Sgt. Hayward did not say anything in response because he was by himself. § 87(2)(b) seemed highly agitated and Sgt. Hayward did not want to get into an altercation with him. § 87(2)(b) was not violent or threatening, but was not making sense and was irrational.

After about two minutes, a sector car arrived and a woman, identified through this investigation as § 87(2)(b), came out of the building. At that time, Sgt. Hayward got out of his vehicle. Sgt. Hayward stated that as far as he knew, the woman was a resident of the building, § 87(2)(b). When § 87(2)(b) came out of the building, Sgt. Hayward spoke to her and the other officers who arrived in the sector car, identified through this investigation as PO Feduniak and PO Menzies. § 87(2)(b) pointed to § 87(2)(b) and stated that § 87(2)(b) had been harassing her all day, and had been following her around and yelling. She stated that he had been following her on a scooter every time she left the building. § 87(2)(b) also stated that she had called to complain earlier that day as well. At this point, Sgt. Hayward instructed PO Feduniak and PO Menzies to take § 87(2)(b)’s complaint.

Sgt. Hayward then spoke again with § 87(2)(b). Sgt. Hayward told § 87(2)(b) to stop bothering § 87(2)(b). Sgt. Hayward told § 87(2)(b) that he was acting irrationally by telling Sgt. Hayward that he was going to “kick [his] ass,” and also acting irrationally by harassing the woman. § 87(2)(b) stated that he knew a police chief and was related to other officers. Sgt. Hayward asked § 87(2)(b) if he was all right or if he was on any form of medication. Sgt. Hayward stated that if § 87(2)(b) did not leave § 87(2)(b) alone, he would be arrested, and that if he has a psychiatric history, Sgt. Hayward could call an ambulance to help him.

Sgt. Hayward said that he did not state, “Have you ever been locked up in a mental institution?” Sgt. Hayward stated that he may have said, “Have you ever had any type of psychiatric problems?” Sgt. Hayward stated that he did not ask, “Are you mental?” He stated that he did not ask, “What kind of mental condition do you have?” Sgt. Hayward stated that he may have said, “Do you have any type of psychiatric condition?” Sgt. Hayward stated that in a situation where he believes an individual has a psychiatric condition, he would ask about the individual’s history and whether he was on any medication. He stated that he would not use language such as “Are you mental?” Sgt. Hayward said that he did not state, “You either walk away or I’m gonna lock you up in a mental ward.” He said he did not use the word “mental” at all during his interaction with § 87(2)(b).

PO Michael Feduniak

On August 20, 2005, PO Feduniak took a complaint report from § 87(2)(b) which stated the following: “At T/P/O, C/V states that the defendant keeps following her and telling people that she robbed a women of 20,000.00 dollars, causing C/V annoyance and alarm.” The defendant is named as “§ 87(2)(b).”

PO Michael Feduniak was interviewed on February 1, 2006 at the CCRB (enc. 9A-9C).

On August 20, 2005, PO Feduniak worked a 0705 X 1540 tour. He was on patrol in sectors CD in a marked motor vehicle. He was working with PO Menzies, and was dressed in uniform. Although the complainant, § 87(2)(b) listed August 21, 2005 as the date of incident, PO Feduniak recalled the incident and stated that it occurred on August 20, 2005. PO Feduniak stated that he went to § 87(2)(b)’s address, § 87(2)(b), on two separate occasions on the date of the incident, but that Sgt. Hayward, who is the subject officer in this investigation, was only present for the second incident. PO Feduniak had the following memo book entry regarding this incident: 1400 1061 § 87(2)(b) § 87(2)(b) ID.

§ 87(2)(g). PO Feduniak stated that the incident occurred at about 2:00 PM. PO Feduniak stated that Sgt. Hayward responded to § 87(2)(b)'s behavior by telling him to calm down. PO Feduniak did not state that Sgt. Hayward asked about § 87(2)(b)'s psychological state or history. Although it has been determined through this investigation that PO Feduniak took a complaint from § 87(2)(b) at this time, PO Feduniak stated that Sgt. Hayward instructed him and PO Menzies to take § 87(2)(b)'s complaint, and then Sgt. Hayward left the scene. PO Feduniak stated that he and PO Menzies remained with § 87(2)(b) for several minutes after Sgt. Hayward left in order to take his complaint.

PO Feduniak stated that § 87(2)(b) was not instructed to walk away, because Sgt. Hayward instructed PO Feduniak and PO Menzies to take § 87(2)(b)'s complaint. PO Feduniak stated that he did not interact with any other civilians during this incident.

PO Andre Menzies

PO Andre Menzies was interviewed on February 10, 2006 at the CCRB (enc. 11A-11B).

PO Menzies stated that on August 20, 2005, he worked a 0705 X 1540 tour. He was assigned to patrol Sectors CD. PO Feduniak was his partner. He was dressed in uniform and assigned to a marked motor vehicle. He had the following memo book entry regarding a response to this location earlier on this date: 1120: 29 § 87(2)(b). 1200: 90Y, Completed 75V § 87(2)(b), 98. Sgt. Hayward was not involved in this incident. PO Menzies stated that he did return to the location later in the day for an incident in which Sgt. Hayward was involved, but he did not have any entries in his memo book regarding that incident.

§ 87(2)(g). He stated that the incident occurred at about 1:00 PM. PO Menzies stated that he did not interact with anyone at the location and remained standing next to the door of his vehicle for the duration of the incident. He stated that PO Feduniak took the complaint from § 87(2)(b). He stated that he did not see Sgt. Hayward interact with anyone at the location and that Sgt. Hayward left the location a couple of minutes after PO Menzies and PO Feduniak arrived. PO Menzies stated that he did not recall the incident very well.

Complainant Conviction History

§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Officer CCRB History

Sgt. Joseph Hayward has no substantiated CCRB allegations in his CCRB history.

Conclusions and Recommendations

Undisputed Facts

The agreed upon facts in this case are as follows: on August 20, 2005, Sgt. Hayward, PO Feduniak and PO Menzies responded to § 87(2)(b)'s 911 call that she was experiencing harassment. Sgt. Hayward arrived first at § 87(2)(b)'s building, § 87(2)(b) § 87(2)(b) approached his vehicle and spoke to him. PO Feduniak and PO Menzies arrived, and § 87(2)(b) came out of the building. § 87(2)(b) spoke with PO Feduniak and § 87(2)(b) continued speaking with Sgt. Hayward. A complaint report was taken from § 87(2)(b) regarding § 87(2)(b)'s harassment.

Disputed Facts

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that Sgt. Hayward asked him "Have you ever been locked up in a mental institution?" "Are you mental?" "What kind of mental condition do

you have?” He stated that Sgt. Hayward asked him how long he had been locked up in a mental institution. Sgt. Hayward asked § 87(2)(b) about his mental condition four or five times. Sgt. Hayward then stated, “You either walk away, or I’m gonna lock you up in a mental ward.”

§ 87(2)(b) Sgt. Hayward and PO Feduniak all stated that Sgt. Hayward did not use this language when talking with § 87(2)(b). § 87(2)(b) stated that one of the officers stated that § 87(2)(b) “appears to be under the influence of something.” She stated that Sgt. Hayward said to § 87(2)(b) “You have three options: walk away, go to the hospital or go to jail.” Sgt. Hayward stated that he did tell § 87(2)(b) that he was acting “irrationally” by harassing § 87(2)(b) and by speaking the way that he was to Sgt. Hayward. He also asked § 87(2)(b) whether he was on any medication. Sgt. Hayward stated that although he did not use the word “mental” in speaking with § 87(2)(b) he may have asked, “Have you ever had any type of psychiatric problems?” or “Do you have any type of psychiatric condition?” Sgt. Hayward stated that he asked these questions because when he is in a situation where he believes that an individual has a psychiatric condition, he would ask about the individual’s history and whether he was on any medication in order to ascertain how to deal with the individual. Sgt. Hayward also stated that if § 87(2)(b) did not leave § 87(2)(b) alone, he would be arrested, and that if he has a psychiatric history, Sgt. Hayward could call an ambulance to help him. PO Feduniak stated that Sgt. Hayward responded to § 87(2)(b) by telling him to “calm down” several times.

Credibility Assessment

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation Not Pleaded

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation A: Sgt. Joseph Hayward spoke obscenely and rudely to § 87(2)(b)

§ 87(2)(b) alleged that Sgt. Hayward asked him “Are you mental?” “What kind of mental condition do you have?” “Have you ever been locked up in a mental institution?” and how long § 87(2)(b) had been locked up in a mental institution for. Neither § 87(2)(b) nor the witness officers corroborated that this language was used. Sgt. Hayward stated that he did ask if § 87(2)(b) had any “psychiatric condition” or any “psychiatric problems.” Sgt. Hayward stated that he asked these questions because § 87(2)(b) did not seem stable. He stated that he did not use the word “mental” in asking § 87(2)(b) about his condition. § 87(2)(b) and PO Feduniak both also stated that Sgt. Hayward did not use the word “mental” when addressing § 87(2)(b) § 87(2)(b), § 87(2)(g)

Allegation B: Sgt. Hayward threatened to have § 87(2)(b) detained in a mental institution.

§ 87(2)(b) alleged that Sgt. Hayward stated, “You either walk away, or I’m gonna lock you up in a mental ward.” Sgt. Hayward said that he stated to § 87(2)(b) that if he did not leave § 87(2)(b) alone, he would be arrested, and that if he has a psychiatric history, Sgt. Hayward could call an ambulance for him. Sgt. Hayward stated that he gave § 87(2)(b) this instruction in order to address § 87(2)(b)’s complaint of harassment. § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: